

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1052 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 "A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 criminal law and procedure and motor vehicles."
- 4 Page 5, between lines 14 and 15, begin a new paragraph and
- 5 insert:
- 6 "SECTION 7. IC 9-26-1-8 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A person who
- 8 **knowingly or intentionally** fails to stop or comply with section 1(1)
- 9 or 1(2) of this chapter after causing injury to a person commits a Class
- 10 A misdemeanor. However, the offense is:
- 11 (1) a Class D felony if:
- 12 (A) the accident involves serious bodily injury to a person;
- 13 or
- 14 (B) within the five (5) years preceding the commission of
- 15 the offense, the person had a previous conviction of any of
- 16 the offenses listed in IC 9-30-10-4(a); ~~and~~
- 17 (2) a Class C felony if the accident involves the death of a
- 18 person;
- 19 (3) a Class B felony if the person **knowingly or intentionally**
- 20 **fails to stop or comply with section 1(1) or 1(2) of this**
- 21 **chapter after committing operating while intoxicated causing**
- 22 **serious bodily injury (IC 9-30-5-4); and**
- 23 (4) a Class A felony if the person **knowingly or intentionally**
- 24 **failed to stop or comply with section 1(1) or 1(2) of this**
- 25 **chapter after committing operating while intoxicated causing**
- 26 **death (IC 9-30-5-5).**
- 27 (b) A person who **knowingly or intentionally** fails to stop or
- 28 comply with section 3 or 4 of this chapter after causing damage to the
- 29 property of another person commits a Class B misdemeanor."
- 30 Page 5, between lines 18 and 19, begin a new paragraph and
- 31 insert:
- 32 "SECTION 9. IC 9-30-5-3 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. **(a) Except as**
2 **provided in subsection (b),** a person who violates section 1 or 2 of this
3 chapter commits a Class D felony if:

4 (1) the person has a previous conviction of operating while
5 intoxicated that occurred within the five (5) years immediately
6 preceding the occurrence of the violation of section 1 or 2 of this
7 chapter; or

8 (2) the person:

9 (A) is at least twenty-one (21) years of age;

10 (B) violates section 1(b) or 2(b) of this chapter; and

11 (C) operated a vehicle in which at least one (1) passenger
12 was less than eighteen (18) years of age.

13 **(b) A person who violates section 1 or 2 of this chapter**
14 **commits a Class C felony if:**

15 **(1) the person has a previous conviction of operating while**
16 **intoxicated causing death (IC 9-30-5-5); or**

17 **(2) the person has a previous conviction of operating while**
18 **intoxicated causing serious bodily injury (IC 9-30-5-4).**

19 SECTION 10. IC 9-30-5-4 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who
21 causes serious bodily injury to another person when operating a motor
22 vehicle:

23 (1) with an alcohol concentration equivalent to at least
24 eight-hundredths (0.08) gram of alcohol per:

25 (A) one hundred (100) milliliters of the person's blood; or

26 (B) two hundred ten (210) liters of the person's breath;

27 (2) with a controlled substance listed in schedule I or II of
28 IC 35-48-2 or its metabolite in the person's body; or

29 (3) while intoxicated;

30 commits a ~~Class D~~ **Class C** felony. However, the offense is a ~~Class C~~
31 **Class B** felony if the person has a previous conviction of operating
32 while intoxicated within the five (5) years preceding the commission
33 of the offense.

34 (b) A person who violates subsection (a) commits a separate
35 offense for each person whose serious bodily injury is caused by the
36 violation of subsection (a).

37 (c) It is a defense under subsection (a)(2) that the accused person
38 consumed the controlled substance under a valid prescription or order
39 of a practitioner (as defined in IC 35-48-1) who acted in the course of
40 the practitioner's professional practice.

41 SECTION 11. IC 9-30-5-5, AS AMENDED BY P.L.2-2005,
42 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
43 JULY 1, 2008]: Sec. 5. (a) A person who causes the death of another
44 person when operating a motor vehicle:

45 (1) with an alcohol concentration equivalent to at least
46 eight-hundredths (0.08) gram of alcohol per:

47 (A) one hundred (100) milliliters of the person's blood; or

48 (B) two hundred ten (210) liters of the person's breath;

49 (2) with a controlled substance listed in schedule I or II of
50 IC 35-48-2 or its metabolite in the person's blood; or

51 (3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense, or if the person operated the motor vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked for a previous conviction for operating a vehicle while intoxicated.

(b) A person at least twenty-one (21) years of age who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath; or

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a ~~Class B~~ **Class A** felony.

(c) A person who violates subsection (a) or (b) commits a separate offense for each person whose death is caused by the violation of subsection (a) or (b).

(d) It is a defense under subsection (a)(2) or subsection (b)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 12. IC 9-30-5-10, AS AMENDED BY P.L.172-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter or IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section. **The court may require that a period of suspension recommended under this section be imposed, if applicable, before a period of incarceration or after a period of incarceration, or both before and after a period of incarceration, as long as the suspension otherwise complies with the periods established in this section.**

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that

exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court shall order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, the court may grant probationary driving privileges under this subsection without requiring the installation of an ignition interlock device if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse. The person granted probationary driving privileges under this subsection shall pay all costs associated with the installation of an ignition interlock device unless the sentencing court determines that the person is indigent.

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 13. IC 35-50-1-2, AS AMENDED BY P.L.1-2006, SECTION 549, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this section, "crime of violence" means **the following:**

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).

(9) Criminal deviate conduct (IC 35-42-4-2).

(10) Child molesting (IC 35-42-4-3).

(11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2).

(12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).

(13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1). ~~or~~

(14) **Operating a motor vehicle while intoxicated** causing death ~~when operating a motor vehicle~~ (IC 9-30-5-5).

(15) Operating a motor vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).

(16) Resisting law enforcement as a felony (IC 35-44-3-3).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If the factfinder determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

- 1 SECTION 14. [EFFECTIVE JULY 1, 2008] **IC 9-26-1-8,**
- 2 **IC 9-30-5-3, IC 9-30-5-4, and IC 9-30-5-5, all as amended by this**
- 3 **act, apply only to crimes committed after June 30, 2008."**
- 4 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1052 as printed February 22, 2008.)

Senator DROZDA